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MEMORANDUM

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TO: Docket Control

FROM: Steven M. Olea  
Director  
Utilities Division

DATE: July 15, 2010

RE: IN THE MATTER OF THE APPLICATION OF NEXTGEN COMMUNICATIONS, INC. FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES. (DOCKET NO. T-20722A-10-0026)

Attached is the Staff Report for the above referenced Application. The Applicant is applying for approval to provide the following services:

- Private Line Telecommunications Services
- Access Services

Staff is recommending approval of the Application.

SMO:AFF:tdp

Originator: Armando Fimbres

Arizona Corporation Commission  
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DOCKET NO. T-20722A-10-0026

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STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

NEXTGEN COMMUNICATIONS, INC

DOCKET NO. T-20722A-10-0026

IN THE MATTER OF THE APPLICATION OF  
NEXTGEN COMMUNICATIONS, INC.  
FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY  
TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES.

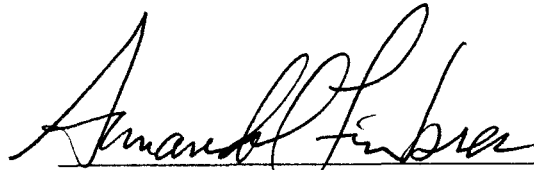
July 15, 2010

## **TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
1. INTRODUCTION .....	1
2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES .....	1
3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES .....	2
4. ESTABLISHING RATES AND CHARGES .....	3
5. REVIEW OF COMPLAINT INFORMATION.....	4
6. COMPETITIVE SERVICES ANALYSIS FOR PRIVATE LINE SERVICES .....	4
6.1 Private Line Services .....	4
6.2 Description of Requested Services .....	4
6.3 A Description of the General Economic Conditions that exist that make the Relevant Market for the Service One that is Competitive. ....	5
6.4 The Number of Alternative Providers of the Service. ....	5
6.5 The Estimated Market Share Held by Each Alternative Provider of the Service.....	5
6.6 The Names and Addresses of Any Alternative Providers of the Service That Are Also Affiliates of the Telecommunications Applicant, As Defined In A.A.C. R14-2-801. ...	5
6.7 The Ability of Alternative Providers to Make Functionally Equivalent or Substitute Services Readily Available At Competitive Rates, Terms and Conditions.....	5
7. RECOMMENDATIONS .....	5
8. RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE .....	6

## STAFF ACKNOWLEDGMENT

The Staff Report for NextGen Communications, Inc., Docket No. T-20722A-10-0026, was the responsibility of the Staff member listed below. Armando Fimbres was responsible for the review and analysis of the Application for a Certificate of Convenience and Necessity to provide intrastate telecommunications services.

A handwritten signature in black ink, appearing to read "Armando Fimbres", written over a horizontal line.

Armando Fimbres  
Public Utilities Analyst V

## **1. INTRODUCTION**

On January 28, 2010, November 26, 2007, NextGen Communications, Inc. ("NextGen" or "Applicant") filed an Application for a Certificate of Convenience and Necessity ("CC&N") to intrastate telecommunications services in Arizona. NextGen seeks certification so that it may aggregate and transport emergency local, Voice over the Internet Protocol ("VoIP"), telemetric, PBX<sup>1</sup>, and mobile E911 traffic, manage and transmit location and calling number data, and provide call routing management for the delivery of emergency calls to Public Safety Access Points ("PSAPs") throughout Arizona.<sup>2</sup> The Applicant also petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive.

On February 10, 2010, Staff issued its First Set of Data Requests to NextGen. On March 17, 2010, NextGen provided information in response to Staff's First Set of Data Requests via email. On March 29, 2010, September 22, 2008, NextGen provided additional information in response to Staff's Second Set of Data Requests dated March 22, 2010.

On May 7, 2010, Staff and NextGen representatives clarified remaining issues via conference call. On May 11, 2010, NextGen submitted a revised tariff.

Staff's review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

## **2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

NextGen is a Maryland "S" corporation formed on October 27, 2008 and is co-located at 275 West Street Suite 400, Annapolis, Maryland with its parent, Telecommunications Systems, Inc. ("TCS"), a publicly held corporation with a market capitalization of approximately \$389 million<sup>3</sup>. Annual revenues for TCS have increased from \$144 million in 2007 to \$300 million in 2009.<sup>4</sup> NextGen's executives are also the key leaders of TCS which has been in operation since 1987. Together these executives have over 110 years of telecommunications and high-technology experience.

NextGen proposes to offer services that Staff categorizes as private line and access services for use by large wireless carriers, VoIP providers, cable TV system operators who provide telecommunications services and/or VoIP, telemetric operators,

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<sup>1</sup> PBX is a common abbreviation for Private Branch Exchange, a telephone system that serves a particular business or office.

<sup>2</sup> A Public Safety Access Point (PSAP) is a call center responsible for answering calls to an emergency telephone number for police, firefighting, and ambulance services.

<sup>3</sup> <http://finance.yahoo.com/q/ks?s=TSYS>, April 15, 2010.

<sup>4</sup> <http://finance.yahoo.com/q/is?s=TSYS&annual>.

PBX users, and mobile voice service providers. NextGen does not provide long distance voice toll services or local exchange voice dial tone services and does not intend to provide such services. According to the Applicant, certification will facilitate the aggregation and transport of emergency calls. In addition, the Applicant has indicated that certification will enable NextGen to acquire and manage Pseudo Automatic Number Identification ("pANI")<sup>5</sup> resources essential for routing emergency calls, pursuant to the Federal Communications Commission's ("FCC's") directive of September 8, 2006<sup>6</sup>.

TCS has been providing unregulated aggregation and transport of routing and caller location information for 911 and E911 emergency calls in Arizona since the 4<sup>th</sup> quarter of 2001. Upon the certification of NextGen, TCS will begin to transition the provision of its unregulated services in Arizona to NextGen who will begin to procure pANIs as necessary.

NextGen states in section (A-18) of its application that certification has not been denied in any state. As of March 25, 2010, NextGen had been granted certification in eleven (11) states – Alabama, Hawaii, Indiana, Louisiana, Michigan, Nebraska, North Carolina, Utah, Vermont and Virginia.

Based on the above information, Staff believes NextGen possesses the technical capabilities to provide the services it is requesting the authority to provide.

### **3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

The Applicant will depend on the financial resources of its parent, TCS, and provided TCS's Form 10-K financial report filed with the Securities and Exchange Commission ("SEC") on March 3, 2009. TCS's financial statements list total assets of \$181 million; total stockholders equity of \$114.3 million; and net income of \$57.6 million for end of year 2008.

Page 23, section 4.D of the Applicant's proposed tariff states that deposits may be collected, however, the target market will not include residence or individual business customers and, as such, presents no risk to end-users. Because end-users will not be NextGen customers, there is no bond required. NetGen's customer market consists of carriers and government agencies. A Commission decision in this matter should emphasize that the Applicant will not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107, Application to Discontinue or Abandon Local Exchange or Interexchange Services.

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<sup>5</sup> Pseudo Automatic Number Identification (pANI) resources are non-dialable 10-digit numbers that function to assist with the routing of 911 and E911 calls.

<sup>6</sup> Attachment A

In its response to Staff's First Set of Data Requests, NextGen requested a waiver of A.A.C. R14-2-510.G,2.<sup>7</sup> NextGen supported its request by stating "NextGen does not follow the USOA<sup>8</sup>, and because it is not rate base or otherwise revenue/expense regulated, there is no need for application of the USOA to NextGen. Any information the Commission may need regarding NextGen's financials could be ascertained by other reliable accounting means." Staff supports NextGen's request for a waiver of A.A.C. R14-2-510.G (2.).

#### **4. ESTABLISHING RATES AND CHARGES**

The Applicant would be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

In general, rates for competitive services are not set according to rate of return regulation. NextGen indicated that its net book value or fair value rate base will be less than \$100,000 at the end of its first twelve months of operation. The rate to be ultimately charged by the Company will be heavily influenced by the market. While Staff considered the fair value rate base information submitted by the Company, it did not accord that information substantial weight in its analysis.

The rates proposed by this filing are for specialized services that have highly focused competition. NextGen will not provide service to residential end users. NextGen's customers will be carriers and government agencies who typically negotiate contract rates through a competitive process with the ultimate rates provided on an individual case basis ("ICB") by NextGen.

Staff has reviewed the proposed rates to be charged by the Applicant. NextGen's rates are for specialized services that have highly focused competition and the services are targeted for carriers and government agencies. These carriers and government agencies have ample resources and bargaining power to protect their business interests while negotiating for the best market prices for services. The rate charged for a service may not be less than the Company's total service long-run incremental cost of providing

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<sup>7</sup> A.A.C. R14-2-510.G,2 – Each utility shall maintain its books and records in conformity with the Uniform Systems of Accounts for Class A, B, C and D Telephone Utilities as adopted and amended by the Federal Communications Commission or, for telephone cooperatives, as promulgated by the Rural Electrification Administration.

<sup>8</sup> USOA or Uniform System of Accounts - Prescribed financial rules and regulations established by the Federal Communications Commission for utilities subject to its jurisdiction.



the service pursuant to A.A.C. R14-2-1109. Therefore, Staff believes that NextGen's proposed rates are just and reasonable.

## **5. REVIEW OF COMPLAINT INFORMATION**

The Applicant states it has not had an Application for service denied, nor revoked in any state. NextGen states that the "Applicant has not been involved in any such actions or investigations" in responding to sections (A-11) and (A-12) of the CC&N application which seeks information regarding the Applicant's complaint and civil and criminal investigatory history.

Staff did not discover any complaint information of concern from three Public Utility Commissions in which NextGen has filed applications.<sup>9</sup> No complaint information filed against NextGen was found on the Federal Communications Commission ("FCC") website. Additionally, Staff did not discover any complaint information of concern through its general information research.

The Applicant also indicated in section (A-12) of its application that none of its officers, directors, partners, or managers have been or are currently involved in any criminal investigations within the last ten (10) years. The Corporations Division of the Arizona Commission has indicated that NextGen is in good standing and the Consumer Services Section reports no complaints have been filed in Arizona.

## **6. COMPETITIVE SERVICES ANALYSIS FOR PRIVATE LINE SERVICES**

### **6.1 Private Line Services**

Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant. The Applicant is therefore engaged in providing telecommunications service for hire to the public, which fits the definition of a common carrier and a public service corporation. Staff believes the Commission has jurisdiction over the services to be provided by NextGen.

### **6.2 Description of Requested Services**

NextGen proposes to provide private line service. Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise.

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<sup>9</sup> Iowa, Oregon and Utah.

**6.3 A Description of the General Economic Conditions that exist that make the Relevant Market for the Service One that is Competitive.**

Interexchange carriers ("IXCs") hold a substantial share of the private line service market. Also, ILECs and a number of CLECs have been authorized to provide private line service. The Applicant will be entering the market as an alternative provider of private line service and, as such, the Applicant will have to compete with several existing companies in order to obtain customers.

**6.4 The Number of Alternative Providers of the Service.**

IXCs are providers of private line service in the State of Arizona. ILECs and a number of CLECs also provide private line service.

**6.5 The Estimated Market Share Held by Each Alternative Provider of the Service.**

IXCs and ILECs hold a substantial share of the private line market. CLECs likely have a smaller share of the private line market.

**6.6 The Names and Addresses of Any Alternative Providers of the Service That Are Also Affiliates of the Telecommunications Applicant, As Defined In A.A.C. R14-2-801.**

None.

**6.7 The Ability of Alternative Providers to Make Functionally Equivalent or Substitute Services Readily Available At Competitive Rates, Terms and Conditions.**

IXCs and ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly, many of the CLECs offer substantially similar services.

**7. RECOMMENDATIONS**

Staff recommends that Applicant's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant keep its books and records as required by General Accepted Accounting Principles ("GAAP") and in accordance with the additional accounting principles required as the subsidiary of a public company, in lieu of

the USOA requirements in A.A.C. R14-2-510.G.

3. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from NextGen indicating that its net book value or fair value rate base was estimated to be less than \$100,000 at the end of the first twelve months of operation. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
7. That the Commission authorizes the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application and state that the Applicant does not collect advances, deposits and/or prepayments from its customers.

**8. RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE**

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.



Federal Communications Commission  
Washington, D.C. 20554

September 8, 2006

Thomas M. Koutsy  
Chair, North American Numbering Council  
c/o Phoenix Center for Advanced Legal and Economic Public Policy Studies  
5335 Wisconsin Avenue, NW  
Suite 440  
Washington, D.C. 20015

Ms. Amy L. Putnam  
Director, Number Pooling Services  
NeuStar, Inc.  
3519 North Fourth Street  
Harrisburg, PA 17110

Dear Mr. Koutsy and Ms. Putnam:

This letter addresses a recommendation by the North American Numbering Council (NANC) that NeuStar, Inc. (NeuStar), the current Pooling Administrator, serve as the Interim Routing Number Authority (Interim RNA) for the pseudo Automatic Number Identification (p-ANI) codes<sup>1</sup> used for routing emergency calls.<sup>2</sup> After review of the materials supplied by the NANC, the Wireline Competition Bureau (Bureau) agrees with the NANC's recommendation and finds it would be in the public interest to assign NeuStar to be the Interim RNA. Furthermore, the Bureau concludes that the p-ANI administration function falls within the broad scope of NeuStar's existing Pooling Administration Contract.<sup>3</sup> Accordingly, the Bureau hereby

<sup>1</sup> A p-ANI is a number, consisting of the same number of digits as Automatic Number Identification (ANI), that is not a North American Numbering Plan (NANP) telephone directory number and may be used in place of an ANI to convey special meaning to the selective router, public safety answering point (PSAP), and other elements of the 911 system. *See IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10252-53, para. 17 (2005) (*VoIP 911 Order*); 47 C.F.R. § 9.3.

<sup>2</sup> *See* Letter from Hoke Knox and Karen Mulberry, pANI Issues Management Group Co-Chairs, to Robert C. Atkinson, NANC Chair (Sept. 2, 2005) *in* Letter from Robert C. Atkinson, NANC Chair, to Thomas J. Navin, Chief, Wireline Competition Bureau, FCC (Sept. 8, 2005) (NANC Sept. 8 Letter); p-ANI Issues Management Group, NANC, pANI Interim Assignment Guidelines for ESQK (issued Sept. 1, 2005) (Initial Interim Guidelines) *in* NANC Sept. 8 Letter. The Initial Interim Guidelines were revised by the NANC on December 5, 2005. *See* Letter from Robert C. Atkinson, NANC Chair, to Thomas J. Navin, Chief, Wireline Competition Bureau, FCC (Jan. 5, 2005) at 2; p-ANI Issues Management Group, NANC, pANI Interim Assignment Guidelines for ESQK (revised Dec. 5, 2005) <[http://www.nanc-chair.org/docs/nowg/Jan06\\_pANI\\_Guidelines\\_\(Revised\).doc](http://www.nanc-chair.org/docs/nowg/Jan06_pANI_Guidelines_(Revised).doc)> (Interim Guidelines).

<sup>3</sup> *See generally* Pooling Administrator - NeuStar, FCC Contract No. CON01000016, signed by Sonna Stampone, Contracting Officer, Federal Communications Commission (dated June 15, 2001) (Contract). We note that the Thousands-Block Pooling Contractor Technical Requirements are set forth in Section C of the Contract. *See id.*, Section C (Contract Technical Requirements).

directs NeuStar to perform the p-ANI administration function. NeuStar must perform this function in accordance with the NANC's Interim Guidelines and the instructions in this letter. This assignment is interim in nature until a permanent p-ANI solution is in place, the expiration of NeuStar's performance as Pooling Administrator, or further notice, whichever occurs first.

As you know, the Federal Communications Commission (FCC) ordered providers of interconnected voice over Internet Protocol (VoIP) service to supply their customers with enhanced 911 capabilities.<sup>4</sup> The NANC proposes temporary measures for the administration and issuance of p-ANI resources. Specifically, the NANC recommends that NeuStar administer the p-ANI function on an interim basis until NANC's p-ANI Issue Management Group proposes a permanent recommendation. In addition, the NANC proposes Interim Guidelines that would apply to the Interim RNA's administration of p-ANI resources, and to entities that seek to obtain p-ANI from the Interim RNA.

The Bureau accepts, as set forth below, the NANC's proposed temporary measures for the administration and issuance of p-ANI resources. The Bureau recognizes, however, that a permanent solution to this issue will best serve the public interest. The Bureau therefore directs the NANC to advise the Bureau, no later than October 10, 2006, as to the date the NANC will recommend to the Bureau such a permanent solution.

The Bureau agrees with the NANC that NeuStar should serve as the Interim RNA. Given its experience as the Pooling Administrator, NeuStar is qualified to perform this role. Moreover, the Contract encompasses this additional function. The Contract in general assigns NeuStar responsibilities over assignment of thousands-block numbering resources – pools smaller than ten-thousands blocks or central office codes administered pursuant to other agreements.<sup>5</sup> In addition, Section 2.5 of the Contract provides that the FCC “may issue rules, requirements, or policy directives in the future, which may increase, decrease or otherwise modify the functions to be performed by the contractor.”<sup>6</sup> Section 2.5.1 further states that “the FCC, the NANC, and/or the [Industry Numbering Committee] may establish NANP numbering resource plans, administrative directives, assignment guidelines (including modifications to existing assignment guidelines) and procedures that may have an effect on the functions performed by the contractor.”<sup>7</sup>

The Bureau therefore directs NeuStar to serve as Interim RNA until: (1) a permanent p-ANI solution is in place; (2) the expiration of NeuStar's performance as Pooling Administrator; or (3) further notice, whichever occurs first. During this interim period, however, NeuStar is not the sole provisioner of p-ANI resources. Carriers or other entities that have been voluntarily providing p-ANI may continue to do so until a permanent solution is found.

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<sup>4</sup> See generally *VoIP 911 Order*, 20 FCC Rcd 10245.

<sup>5</sup> Contract Technical Requirements, § 1.1.

<sup>6</sup> *Id.*, § 2.5.

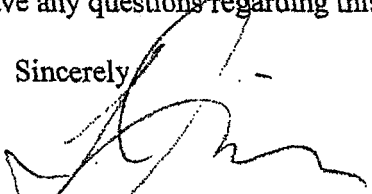
<sup>7</sup> *Id.*, § 2.5.1; see also *id.*, § 1.4 (“The contractor shall also ensure that domestic numbering administration shall be effective.”).

The Bureau further requires NeuStar, in its capacity as Interim RNA, to comply with the NANC's Interim Guidelines, except as explained in this paragraph. Section 3.3 of the Interim Guidelines states that Part 52 of the FCC's rules<sup>8</sup> (which governs numbering) does not apply to p-ANI except as provided in the Interim Guidelines.<sup>9</sup> NeuStar shall not follow this section. Until the Commission determines that Part 52 does not apply to p-ANI or makes some other ruling on the topic, we require NeuStar to operate consistently with the requirements of Part 52.<sup>10</sup> Accordingly, an entity seeking p-ANI from NeuStar must have appropriate authority to access numbering resources in general. The entity must be licensed or certified by the FCC or a state commission to operate as a telecommunications carrier and must provide NeuStar with evidence of such authority.<sup>11</sup> Thus, "Eligible Users," as defined in the Interim Guidelines, shall be no broader than indicated in this paragraph. Furthermore, NeuStar may assign p-ANI to VoIP service providers that can provide such evidence of carrier status as well as to carriers that provide wholesale 911-related services to VoIP service providers. Requests for waivers of this requirement may be filed by any entity that certifies that it fully remits 911 emergency service fees into all state and local 911 funds, and fully contributes into universal service mechanisms.

Finally, the Bureau directs NeuStar to submit a Change Order Proposal on this issue to begin the contract modification process. Section 2.5.3 of the Contract directs that "within a period of not more than 30 calendar days" from the date that the FCC modifies the functions to be performed by the contractor, "[t]he contractor shall ... provide the Contracting Officer, state PUCs, and the NANC with written notice regarding these changes and summarize the potential impact of the changes upon service and cost, if any."<sup>12</sup> Therefore, NeuStar must submit the Change Order Proposal within 30 calendar days of the date of this letter.

Please let me know if you have any questions regarding this matter.

Sincerely,



Thomas J. Navin  
Chief  
Wireline Competition Bureau

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<sup>8</sup> 47 C.F.R. § 52.1 *et seq.*

<sup>9</sup> Interim Guidelines, § 3.3.

<sup>10</sup> *Cf. Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7591, paras. 31-32 (2000) (placing wireless E911 emergency service routing digits (ESRD/ESRK) in the general category of administrative numbers, which includes "any numbers used by carriers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards").

<sup>11</sup> *Id.* at 7615, para. 97.

<sup>12</sup> Contract Technical Requirements, § 2.5.3.